



State of Oklahoma
Department of Agriculture, Food, and Forestry

Mary Fallin
Governor

Jim Reese
Secretary of Agriculture

The 2012 Oklahoma Legislature passed HB 2917 and that statute in Title 2.10-9.7 (D) requires ODAFF to promulgate rules "PROVIDING VOLUNTARY FEES CHARGED TO REGISTERED POULTRY FEEDING OPERATIONS FOR THE DEVELOPMENT AND WRITING OF NUTRIENT MANAGEMENT PLANS (NMP/AWMP)". As a result of that mandated statute, The Oklahoma State Board of Agriculture approved the Title 35: 17-5-2, 3, 5, 10 amended rules (see enclosed) on January 29, 2013.

THESE RULES BECOME EFFECTIVE ON JULY 1, 2013.

These proposed rule changes are related to offering Registered Poultry Feeding Operations with the opportunity to more easily stay in compliance with the Statute-mandated requirement of revising a Nutrient Management Plan (NMP) and Animal Waste Management Plan (AWMP) every six (6) years and/or when the poultry operation adds or subtracts poultry litter land application fields or when their carcass disposal methods changes. The proposed rule change allows registered poultry feeding operations to pay a voluntary amount annually of \$100 for the purpose of securing the ODAFF service of composing the required revised NMP and AWMP [see second page of enclosure in 35: 17-5-3 (b) (8)].

Beginning July 1, 2013, the options for poultry feeding operations to receive 6 year required NMP/AWMP revisions or new plans follow:

- 1.) Voluntarily submit to the Oklahoma Department of Agriculture, Food and Forestry (ODAFF), AEMS Division a \$100 annual, voluntary fee for the purpose of securing the ODAFF service of writing a NMP/AWMP for your poultry operation;
- 2.) Contact your district/county USDA NRCS office and request that they write your NMP/AWMP;
- 3.) Contact private entities to write your NMP/AWMP (these plans shall be approved by ODAFF prior to implementation at an operation).

Please email me with any clarification questions that you may have regarding
Nutrient Management Plans/Animal Waste Management Plans.
Thank you.

Respectfully,

D. J. Parrish, Director
ODAFF, AEMS
dan.parrish@ag.ok.gov
405/522-4659

-Enclosure-

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SUBCHAPTER 5. REGISTERED POULTRY FEEDING OPERATIONS

35:17-5-2. Definitions

In addition to the terms contained and defined in the Oklahoma Registered Poultry Feeding Operations Act, the following words or terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise:

"Animal Waste Management Plan" or **"AWMP"** means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the State as required by the State Department of Agriculture pursuant to the provisions of Section 10-9.7 at Title 2 of the Oklahoma Statutes. The plan shall be prepared by the USDA NRCS or an entity approved by the State Department of Agriculture.

"Discharge" means any release by pumping, pouring, emptying, or dumping of poultry waste directly or through a manmade conveyance into waters of the State.

"Nutrient Management Plan" means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state as required by the Oklahoma Department of Agriculture, Food and Forestry pursuant to the provisions of Section 10-9.7 of Title 2 of the Oklahoma Statutes and shall also include a certified nutrient management plan and animal waste management plan.

"Runoff" means any release by leaking, escaping, seeping, or leaching of poultry waste into waters of the State.

"USDA NRCS" means the United States Department of Agriculture Natural Resources Conservation Service.

"Waste facility" means any structure or combination of structures utilized to control poultry waste until it can be utilized in an authorized manner. These structures shall include all treatment and storage structures but not be limited to pits, burial sites, barns, or roof covered structures which house poultry, composters, poultry waste storage sites, or retention structures, and all appurtenances or additions.

35:17-5-3. Registration, Nutrient Management Plan (NMP) and Animal Waste Management Plan (AWMP) required

(a) Registration.

(1) Every poultry feeding operation in operation on July 1, 1998 shall register by January 1, 1999. All registrations shall be received by the State Department of Agriculture prior to January 1, 1999.

(2) Every poultry feeding operation shall be required to reregister annually by January 1 to operate.

(3) Any poultry feeding operation that has a valid license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall not be required to register pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

(4) The owner or operator of a poultry feeding operation not classified as a poultry feeding operation may register if the owner elects to come under the provisions of the Oklahoma Registered Poultry Feeding Operations Act and the rules of the State Board of Agriculture.

(5) It shall be unlawful for any person to construct or operate a new poultry feeding operation without first registering with the State Board of Agriculture.

(b) Nutrient Management Plan and Animal Waste Management Plan.

(1) Every poultry feeding operation shall obtain or apply for an approved ~~Animal Waste Management Plan~~ NMP and AWMP addressing both nitrogen and phosphorus by January 1, 1999.

(2) All new operators of poultry feeding operations shall obtain or apply for an ~~Animal Waste Management Plan~~ NMP and AWMP prior to construction of the facility.

(3) The ~~Animal Waste Management Plan~~ NMP and AWMP shall be prepared by USDA NRCS or an entity approved by the State Department of Agriculture.

(4) Plans shall be reviewed and updated at least every six (6) years from the date the NMP and AWMP was obtained. Plans shall also be reviewed and updated in the following circumstances:

(A) When a change in the waste utilization standards occurs and upon notification by the State Department of Agriculture.

(B) Upon recommendation of the State Department of Agriculture.

(5) Plans shall be updated prior to the expansion of a facility.

(6) All poultry feeding operations with an existing ~~Animal Waste Management Plan~~ NMP and AWMP not based on a soil test and current USDA NRCS phosphorus standards shall update the plan or apply for an update by January 1, 1999 and the plan shall address both nitrogen and phosphorus.

(7) Implementation of the NMP and AWMP shall occur within ninety (90) days of receipt of the NMP and AWMP unless otherwise determined by the State Department of Agriculture. In no event shall the poultry feeding operation land apply poultry waste in excess of the current USDA NRCS Waste Utilization Standards, unless the State Department of Agriculture approves other standards.

(8) Beginning on January 1, 2013, registered poultry feeding operations may voluntarily submit to the Oklahoma Department of Agriculture, Food, and Forestry an annual assessment of one hundred dollars (\$100.00) for the purpose of securing the ODAFF service of drafting NMP and AWMP for their registered poultry feeding operation(s). ODAFF shall revise plans for poultry operations that pay the voluntary assessment every six years and/or when the poultry operation adds or subtracts poultry litter land application fields or when their carcass disposal method changes. ODAFF will assign a priority of drafting new or revised NMP and AWMP to operations that pay ODAFF the annual voluntary assessment over operations that do not pay the voluntary assessment. ODAFF may assign additional priority to operations based on the receipt date of the voluntary annual assessments.

35:17-5-5. Nutrient Management Plan and Animal Waste Management Plan requirements

(a) The ~~Animal Waste Management Plan~~ NMP and AWMP shall contain, at a minimum, the following:

(1) A description of poultry waste handling procedures and availability of equipment and type of equipment to be used.

(2) The calculations and assumptions used for determining land application rates.

(3) All nutrient analysis data, including soil and poultry waste testing.

(4) Legal description of lands to be used by an operation for land application.

(5) Soils map with description and type or series.

(6) Land application rates of poultry waste shall be based on the available nitrogen and phosphorus content of the poultry waste and soil test results.

(7) The procedures documented in the NMP and AWMP shall ensure that the handling and utilization of poultry waste complies with the following requirements:

(A) Adequate poultry waste storage shall be provided. Poultry waste shall not be stored without adequate protection from rainfall and runoff. All new poultry feeding operations shall make provisions for storage of poultry waste prior to operating. Exceptions to storage requirements for poultry waste in emergency situations shall be granted on a case by case basis. Exceptions shall include but not be limited to allowing a contract poultry grower to take such actions as are necessary to meet requirements imposed on a grower by an integrator. However, in all situations growers shall be required to take all actions feasible to prevent pollution from stored poultry waste.

(B) Poultry waste shall not be applied to land when the ground is saturated or during rainfall events. Poultry waste shall not be applied to land when the ground is frozen or snow covered except in conformance with the NMP and AWMP.

(C) Poultry waste shall only be applied to suitable land at appropriate times and rates as specified by the NMP and AWMP. Runoff of poultry waste from the application site is prohibited.

(D) All practices necessary to minimize movement of poultry waste to watercourses shall be utilized and documented in the NMP and AWMP.

(E) Edge of field, grassed strips shall separate water courses from runoff which may be carrying eroded soil and poultry waste.

(F) Poultry waste application shall be prohibited on land subject to excessive erosion.

(G) Land application rates of poultry waste shall provide controls for runoff as appropriate for site conditions.

(b) The NMP and AWMP shall also include a method for the disposal of carcasses. The NMP and AWMP shall include provisions for disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates. Accepted methods of carcass disposal include:

(1) Rendering

(A) Disposal of all carcasses shall occur within a reasonable period of time as approved by the State Department of Agriculture.

(B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors.

(2) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and specific measures and practices are identified which will be utilized to protect the ground and surface waters of the State.

(3) Composting by methods as approved in the NMP and AWMP.

(4) Incineration shall only be used as a method of carcass disposal if the poultry feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division, if required.

(c) Storage and land application of poultry waste shall not cause a discharge or runoff of significant pollutants to waters of the State or cause a water quality violation to waters of the State.

(d) The operator shall notify the State Department of Agriculture within twenty-four (24) hours of a discharge.

35:17-5-10.1. Violation points system

In addition to the State Department of Agriculture's enforcement authority, the following violation points system shall be utilized to assess points prior to designating a poultry feeding operation as a concentrated animal feeding operation subject to the Oklahoma Concentrated Animal Feeding Operations Act pursuant to Section 9-201 et seq. of Title 2 of the Oklahoma Statutes.

- (1) When any poultry feeding operation accrues a total of fifteen (15) or more points in any two (2) year time period, that poultry feeding operation shall be designated a concentrated animal feeding operation and shall comply with all aspects of the Oklahoma Concentrated Animal Feeding Operations Act.
- (2) Points shall accrue based on the following violations of the Oklahoma Registered Poultry Feeding Operations Act:
 - (A) Knowingly making any false statement, representation, or certification in, omitting material data from, or tampering with any application for registration shall be a significant violation and accrue three (3) to five (5) points.
 - (B) Constructing or operating a new poultry feeding operation without first registering with the State Board of Agriculture shall accrue two (2) to five (5) points.
 - (C) Failure to register a poultry feeding operation by January 1, 1999 which was in operation on July 1, 1998 shall accrue two (2) to five (5) points.
 - (D) Failure by a poultry feeding operation to annually reregister with the State Board of Agriculture shall accrue one (1) to three (3) points.
 - (E) Increasing the capacity of a poultry feeding operation in excess of ten percent (10%) of the facility's original licensed capacity prior to reregistering with the State Board of Agriculture shall accrue one (1) to two (2) points.
 - (F) Failure of a poultry feeding operation to send written notification to the State Department of Agriculture upon changing integrators shall accrue one (1) point.
 - (G) Failure by the operator of a poultry feeding operation to attend the required hours of educational courses on poultry waste handling and management specified by the Oklahoma Registered Poultry Feeding Operations Act shall accrue two (2) to four (4) points.
 - (H) Failure by a poultry feeding operation to utilize or comply with Best Management Practices or the ~~Animal Waste Management Plan~~ NMP and AWMP and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue three (3) to five (5) points.
 - (I) Failure by a poultry feeding operation to utilize or comply with Best Management Practices or the ~~Animal Waste Management Plan~~ NMP and AWMP and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue one (1) to three (3) points.
 - (J) Failure by a poultry feeding operation to keep all records as required by the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated thereunder shall accrue one (1) to three (3) points.
 - (K) Failure by a poultry feeding operation to properly dispose of carcasses or failure to follow the carcass disposal plan as outlined in the ~~Animal Waste Management Plan~~ NMP and AWMP shall accrue two (2) to four (4) points.

- (L) Failure to allow inspections of the poultry feeding operation facility or records for purposes of routine inspections, complaint investigations, or any other type of inspection shall be a significant violation and accrue three (3) to five (5) points.
- (M) Knowingly making any false statement, representation, or certification form, notice, or report, or knowingly rendering inaccurate any monitoring device or method required to be maintained shall be a significant violation and accrue three (3) to five (5) points.
- (N) Any other violation of the Oklahoma Registered Poultry Feeding Operations Act or any rule promulgated thereunder shall accrue one (1) to five (5) points, depending upon the severity of the violation as determined by the State Board of Agriculture.
- (O) If a violation is deemed to be willful or intentional, up to an additional five (5) points may be added to the total points per violation by the State Board of Agriculture and the violation shall be deemed significant.
- (3) All violations which are assessed four (4) or five (5) points shall only accrue points upon approval by the State Board of Agriculture. All other violations shall accrue points upon approval by the Water Quality Services Division of the State Department of Agriculture. Assessment of points by the Water Quality Services Division may be appealed in writing to the Division Director. If the accumulated number of points reaches a total of fifteen (15) points, the owner may appeal to the State Board of Agriculture.
- (4) In the event that a violation is not corrected within sixty (60) days, an additional accrual of assessed points may occur.
- (5) Even if the violation points do not add up to a total of fifteen (15) points, the State Board of Agriculture may deem a violation that results in serious harm to be so significant as to warrant immediate designation as a concentrated animal feeding operation and subject to the Oklahoma Concentrated Animal Feeding Operations Act.
- (6) Any poultry feeding operation designated as a concentrated animal feeding operation shall be so designated for a minimum of one (1) year and the registration as a poultry feeding operation shall be suspended. At the State Department of Agriculture's discretion, the poultry feeding operation may reinstate the registration and the designation as a concentrated animal feeding operation may be removed so long as the poultry feeding operation complies with all conditions which the State Department of Agriculture imposes on the poultry feeding operation.
- (7) Conditions for removal from the designation as a concentrated animal feeding operation shall at a minimum include compliance during the entire designation with all aspects of the Oklahoma Concentrated Animal Feeding Operations Act and its attendant rules, and correction of all conditions which caused the designation as a concentrated animal feeding operation.

35:17-5-16. Rule Advisory Committee

(a) The State Board of Agriculture shall appoint a rule advisory committee who, without compensation, shall act as advisors to the Board in the formulation of the rules promulgated pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

(1) The committee shall consist of:

- (A) One member shall represent the integrators;**
- (B) Three members shall represent the contract growers;**
- (C) One member shall represent the field of hydrogeology;**
- (D) One member shall be a soil scientist;**

(E) One member of a local conservation district;

(H) One member employed by the Oklahoma Water Resources Board;

(I) One member shall represent the field of water quality science, and

(J) Three members shall represent the general public, one of which shall represent the water department of a municipality.

(2) All appointments shall be for a three-year term. All members shall serve in such capacity during said term at the pleasure of the Board.

(3) The membership shall appoint a chair, vice-chair, and secretary from its membership and thereafter as determined by the committee.

(b) Except for emergency rules, proposed rules shall be submitted to the rule advisory committee at the same time as the Department causes notice to be published in "The Oklahoma Register" pursuant to the Administrative Procedures Act. Comments of the rule advisory committee shall be submitted to the members of the Board at least fifteen (15) days prior to any official action by the Board on the rules.

(c) Proposed emergency rules shall be submitted by the Department to the rule advisory committee at least five (5) days prior to the rules being considered by the Board.